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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/592,921	09/14/2006	Colin Christopher David Giles	J3747(C)	6265

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EXAMINER

KENNEDY, NICOLETTA

ART UNIT	PAPER NUMBER
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1611

NOTIFICATION DATE	DELIVERY MODE
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03/30/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No.	Applicant(s)	
	10/592,921	GILES ET AL.	
	Examiner	Art Unit	
	NICOLETTA KENNEDY	1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-9 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims 1-4, 6-9 and 11 are currently pending.

Priority

This application, filed September 14, 2006, is a national stage entry of PCT/EP05/01454 filed February 10, 2005, and claims foreign priority to EPO application 04251506.4, filed March 17, 2004. The International Bureau has provided a certified copy of the EPO application.

Withdrawn Claim Rejections and Response to Arguments

1. The rejections of record are withdrawn in view of Applicant's amendments.
2. Applicant's arguments with respect to claims 1-4, 6-9 and 11 have been considered but are moot in view of the new ground(s) of rejection.

New Rejections Necessitated by Amendment

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-4, 6-7, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parr et al. (US 2002/0136771) (pub. Sept. 26, 2002) in view of Pereira et al. (US 2003/0186834) (pub. Oct. 2, 2003) as evidenced by Kids Health (Skin, Hair and Nails, 2011).

Regarding claims 1-4, Parr et al. teach a skin-care composition comprising about 0.1 to about 10% by weight of at least one cationic surfactant (abstract). The cationic surfactant may be cetrimonium chloride (component a), hydroxyethyl cetyldimonium

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chloride (component c) and mixtures thereof (para. 0031). The composition may also comprise polyquats (para. 0029).

However, Parr et al. fail to teach that a di-(C₂₀-C₂₄) imidazoline quaternary surfactant is used as the polyquat. Pereira et al. cure this deficiency.

Pereira et al. teach imidazoline quats and quat mixtures used in personal care products (abstract and para. 0006). The mixture includes at least one dialkyl imidazoline quat with both alkyl groups being C₂₀-C₂₄ alkyl groups (para. 0043).

It would have been prima facie obvious to a person of ordinary skill in the art to have combined the teachings of Parr et al. with those of Pereira et al. to incorporate a di-alkyl imidazoline quaternary surfactant into the formulation. One would have been motivated to do so because Parr et al. teach that polyquats may be included as cationic surfactants but only provides a few limited examples. Pereira et al. teach that dialkyl imidazoline quot having two C₂₀-C₂₄ alkyl groups are known in the art to be used in personal care products and therefore, one would have been motivated to substitute a dialkyl imidazoline quot having two C₂₀-C₂₄ alkyl groups for the polyquats taught by Parr et al.

With regard to the ranges for weight %, Parr et al. teach that the polyquat may be present at 0.5% by weight (example 6). With regard to the amount of the cetrimonium chloride and hydroxyethyl cetyldimonium chloride, MPEP 2144.05 states that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation" quoting *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claim 6, Parr et al. teach that water is present at 64.63% by weight (example 11).

Regarding claims 7 and 9, Parr et al. teach that the composition comprises an oil component such as silicone oil or mineral oil (para. 0035).

Regarding claim 11, Parr et al. teach that the composition is directed to skin-care and skin-treatment products for topical application (para. 0021). Thus, application to the

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skin is implied. The skin is covered by hair, and thus the composition is also applied to hair (Kids Health, p.1).

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parr et al. (US 2002/0136771) (pub. Sept. 26, 2002) in view of Pereira et al. (US 2003/0186834) (pub. Oct. 2, 2003) as evidenced by Kids Health (Skin, Hair and Nails, 2011) as applied to claims 1-4, 6-7, 9 and 11 above, and further in view of Focht et al. (US 2004/0092415) (pub. May 13, 2004).

The combination of Parr et al. in view of Pereira et al. teach each limitation of claim 1 but fail to teach that the formulation further comprises a hydrophobically treated clay. Focht et al. cure this deficiency.

Focht et al. teach that hydrophobically modified dispersed smectite clay may be used as a structurant to improve high temperature stability of a topical skin product (title and paras. 0104 and 0110).

It would have been prima facie obvious to a person of ordinary skill in the art to have combined the teachings of Parr et al. and Pereira et al. with those of Focht et al. to incorporate a hydrophobically treated clay into the skin treatment formulation. One would have been motivated to do so to improve the stability of the product at high temperature.

Conclusion

No claims are allowable.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicoletta Kennedy whose telephone number is (571)270-1343. The examiner can normally be reached on Monday through Friday 11:30 to 8:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Gollamudi Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. K./

Examiner, Art Unit 1611

/SHARMILA G. LANDAU/

Supervisory Patent Examiner, Art Unit 1611